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2004 Access and Visitation Grants Awarded

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gives states Access and Visitation Grants to support and facilitate non-custodial parents' access to, and visitation with, their children. A state may use its grant to fund mediation, counseling, education, development of parenting plans, parenting time enforcement, and development of guidelines for parenting time and alternative custody arrangements.

The Access and Visitation Grant, awarded to the Family Independence Agency and administered by the State Court Administrative Office (SCAO), is a permanent component of PRWORA, but is dependent upon yearly appropriation from the federal budget. Local governments must provide 10 percent matching funds for their programs and submit program status reports to the SCAO. Grant contracts also require the recipients to develop other funding sources to replace the grants so that new grant recipients can be chosen in the future.

Twenty-one Michigan friends of the court (FOC) offices were recently awarded a total of \$281,813 for FY 2004 to establish and administer access and visitation programs. The recipients are to develop innovative programs that target populations not being assisted by currently mandated services. Recipients were encouraged to work with other agencies within their jurisdictions. The following counties were awarded grants:

Antrim, Grand Traverse, and Leelanau Counties received funding to continue their supervised parenting time program and their educational and counseling program for parents involved in paternity cases.

Baraga, Houghton, and Keweenaw Counties received funding to continue their supervised parenting time, exchange, and parent education programs.

Eaton County received funding to train supervisors and establish a supervised parenting time program.

Jackson County received funding to continue its supervised parenting time program and the services provided by the family relations counselor.

Kalamazoo, Allegan, Barry, Calhoun, and Van Buren Counties received funding to continue a supervised parenting time program and other services provided by Kalamazoo Family and Children Inc.

Note: These five counties with separate friend of the court offices joined together to establish one access and visitation program.

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Child Support Distribution: Questions and Answers

Federal distribution rules are difficult to understand. The complex distribution process frustrates parents because it is difficult to explain to them why different amounts are distributed each week or why no payment was received. Parents often assume a mistake was made or that they are not being told the truth. The following general information may help court personnel explain child support distribution.

A full month's current child support on all a payer's cases must be paid before any amount may be allocated to past due support or fees: For example, if \$200.00 is charged the first day of the month, then the first \$200.00 received will be applied to current child support. If the income withholding notice designates a portion of the payment to pay arrears or fees for one case, the money will still be applied to pay current support for all cases first.

Arrearage payment: Once the current month's child support is paid on all a payer's cases any other money received will be applied first to pay any past due support owed to the other parent. Any additional money will then be applied to past due support to the state. **Note:** There is one exception. Money collected by federal tax offset must pay all state arrears before being applied to pay other arrears.

Payment of service fees: Once all current child support on all a payer's cases and all past due support has been paid, any other money received during the month will be applied to pay fees.

Payers with more than one case: When a non-custodial parent has two or more cases, money received will first be sent to the custodial parents for current child support. If the payment is not enough to pay current child support for all cases, then money for arrears or service fees on one case must be applied to the other cases to pay current child support.

The State Court Administrative Office has developed a pamphlet titled, "***Understanding Child Support Distribution.***" This pamphlet can be viewed at: <http://courts.mi.gov/scao/resources/publications/pamphlets/focb/psa30.pdf> and includes information about arrearage assignment rules. **Please do not use previous versions because they contain a telephone number for Tele-Court which has been reassigned by the telephone company.** If you have suggestions for changes in the State Court Administrative Office's distribution pamphlet please submit comments to focb@courts.mi.gov.

Other pamphlets regarding custody, parenting time, and child support can be viewed at: <http://courts.mi.gov/scao/resources/publications/pamphlets/index.htm#focpubs>.

The Michigan Family Independence Agency Office of Child Support has also produced a publication explaining child support distribution and allocation. This publication can be found at: http://mi-support.cses.state.mi.us/misdu/documentation/MiSDU_-_Allocation_Distribution.pdf.

Note: Parents with payment processing questions may call the Family Independence Agency Special Initiatives Unit at 1-866-540-0008 or use their local friend of the court voice response system.

Cases in Brief

In *Rose and Calhoun County v Stokely*, Docket No. 241029 (2003), the Michigan Court of Appeals reviewed the constitutionality of allocating a mother's confinement expenses exclusively to the father. The defendant father raised, constitutional equal protection to challenge to the Paternity Act's requirement that the father pay the mother's confinement expenses. The Calhoun County Circuit Court agreed with the defendant and apportioned the expenses between the plaintiff and defendant using the Michigan Child Support Formula.

Billie Rose, an unwed mother, gave birth to a daughter in 1996, she received public assistance from the Michigan Family Independence Agency (FIA) for confinement expenses. Nearly four years later, the defendant, Robert John Stokely was found to be the father of the child and was ordered to pay child support and to reimburse the state of Michigan \$2,908.41 in confinement expenses.

The Paternity Act, MCL 722. 712(1) empowers the court to order that the father pay the confinement expenses. There is no authority within the Act for compelling the mother to pay confinement expenses. In part, the Act states:

“The father is liable to pay the expenses of the mother's confinement, and is also liable to pay expenses in connection with her pregnancy as the court in its discretion may deem proper.”

The defendant objected to the order requiring that he pay all of the confinement expenses. He argued that the expenses should be apportioned based on the parties' incomes. He further contended that the Paternity Act provision constituted impermissible gender-based discrimination in violation of the Equal Protection Clauses of the Michigan and Federal Constitutions. The circuit judge agreed.

After the Michigan Court of Appeals denied leave to appeal, the prosecutor sought leave to appeal to the Michigan Supreme Court. In lieu of granting the appeal, the Supreme Court remanded the case back to the Michigan Court of Appeals. The remand order directed the Court of Appeals to decide the appropriate constitutional test to apply to the equal protection claim and to determine whether MCL 722.712(1) violated that standard.

On remand, a three judge Court of Appeals panel upheld the statute, but the panel said that it would have affirmed the circuit judge had it not been constrained by an earlier Court of Appeals precedent. The panel's expressed disagreement with that precedent caused the Court of Appeals to convene a seven-judge special conflict panel to reconsider the present case. By a 4-3 vote, the special panel upheld the constitutionality of the challenged statute.

The lengthy controlling opinion signed by the three judges ruled that the statute requiring a father to pay 100 percent of the confinement expenses is constitutional. One judge concurred separately. Three other judges dissented. The defendant has not appealed to the Supreme Court.

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The controlling opinion detailed the three levels of review that maybe applied to equal protection arguments. The standards include “strict scrutiny,” which is the highest level of review, heightened scrutiny, which is an intermediate level of review, and rational-basis, which is the lowest review standard.

Using “heightened scrutiny” standards, the court found that the Paternity Act requirement allocating confinement expenses only to the father serves an important governmental interest and is substantially related to the achievement of an important governmental objective—ensuring support and education to children born outside of marriage. The concurring opinion also noted that, while the father bears the financial burden of the mother’s confinement, the mother bears the physical burden.

Three dissenting judges would have held that the provision does violate the Equal Protection guarantees of the Michigan and Federal Constitutions. Among several arguments, the dissent indicated that there are reasonable means of determining and apportioning confinement expenses between both parents, and that this would be in the best interest of the child.

2004 Access and Visitation Grants Awarded, *continued from page 1*

Livingston County received funding to continue its supervised parenting time, exchange, and parent education programs.

Marquette County received funding to continue its supervised parenting time and counseling programs.

Muskegon County received funding to continue its program to increase non-custodial fathers’ access to their children through group and individual parenting time conferences.

Newaygo County received funding to continue to retain a parenting time supervisor.

Oakland County received funding to continue its supervised parenting time, exchange, parent education, and counseling programs.

Oceana County received funding to establish a supervised parenting time program and a parent education program, and to provide a parenting time monitor.

St. Joseph County received funding to establish a supervised parenting time and monitored exchange program for families that are subject to a personal protection order.

Wayne County received funding to establish a parenting time education program.

The majority of the county grants will allow counties to maintain or establish supervised parenting time programs. Many will combine a supervised parenting time program with counseling and/or a parent education program. Services that have been funded by access and visitation grants have assisted many families in establishing or re-establishing child-parent relationships. The SCAO congratulates those counties that received Access and Visitation Grants for FY 2004.

Capitol Corner

Since the last publication of the Pundit in July of 2003, seven bills that could impact the friends of the court have been introduced in the House or the Senate or have been signed into law. Three address grandparenting time. These and other bills may be viewed at: <http://www.michiganlegislature.org/>.

House Bill 4013 passed the House on July 2, 2003, and has been referred to the Senate's Committee on Families and Children Services. The bill would amend the Paternity Act by requiring that the parents share responsibility for the mother's confinement and pregnancy expenses. The Act currently requires that the father pay 100%. Under the bill, if Medicaid has paid the confinement and pregnancy costs, the mother will not be responsible for any of the expenses. If the father marries the mother after the birth of the child, the father's responsibility for the unpaid pregnancy and confinement costs is tolled as long as the parents remain married.

House Bill 4748 (Public Act 138) was passed by the House on June 18, 2003, passed by the Senate on July 16, 2003, was signed by the Governor on August 13, 2003. The act amended the Revised Judicature Act and became **effective October 1, 2003**. The act increases the Friend of the Court Processing Fee from \$1.25 to \$1.50. The additional \$.25 will be deposited in the Attorney General Operations Fund. **Note:**

House Bill 4737 (Public Act 178) became **effective October 1, 2003**. That Act provides that of the \$1.50 Friend of the Court Processing Fee, \$1.00 will be deposited in the State Court Fund, \$.25 will be deposited in the County General Fund, and \$.25 will be deposited in the Attorney General Operations Fund.

House Bill 5039 was introduced on August 13, 2003, and referred to House Committee on Judiciary. The bill would amend the Child Custody Act by establishing a rebuttable presumption that a parent's actions and decisions regarding grandparenting time are in the child's best interest. The bill sets forth criteria for individuals to have standing in a domestic relations case in order to seek grandparenting time. For example, the bill would allow a parental grandparent to file a motion for grandparenting time if the child's parent has lived separate and away from the other parent and grandchild for more than a year. Under this bill, a grandparent could only file one motion every two years, absent a showing of good cause.

Senate Bill 621 was introduced on July 16, 2003, and referred to the Committee on Families and Human Services. The bill would amend the Support and Parenting Time Enforcement Act by allowing the court to make a retroactive correction to a child support arrearage. Under the bill, the retroactive correction would not be considered retroactive modification of an arrearage. **Note:** Senate Bill 621 is tie barred to House Bill 4120. House Bill 4120 permits the court to terminate a child support obligation under certain circumstances.

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Senate Bill 727 was introduced in the Senate on September 24, 2003, and referred to the Senate Committee on Judiciary. The bill would amend the Child Custody Act. As with House Bill 5039, Senate Bill 727 would establish a rebuttable presumption that a parent's actions and decisions regarding grandparenting time are in the child's best interest. The grandparent seeking grandparenting time would have to prove by clear and convincing evidence that grandparenting is in the child's best interests for the court to order grandparenting time. The bill sets forth the factors the court must consider when ordering grandparenting time. The bill requires the court to state on the record its reasons for granting or denying grandparenting time.

Senate Bill 734 was introduced in the Senate on September 25, 2003, and referred to the Senate Committee on Judiciary. The bill would amend the Child Custody Act. The bill would establish a rebuttable presumption that a parent's actions and decisions regarding grandparenting time are in the child's best interest. The bill would establish the circumstances under which a grandparent could seek a grandparenting time court order. Under the bill, a grandparent could file for grandparenting time only once every two years absent a showing of good cause. The bill also defines "fit parent."

FYI

Court Rule Amendment

Michigan Rule of Evidence 1101(b) was amended March 25, 2003, and became effective September 1, 2003. In summary, the amendment provides that rules of evidence do not apply to custody or parenting time reports or recommendations submitted to the court **by the friend of the court**.

Child Support Formula Update

The Michigan Supreme Court postponed implementation of the 2003 Child Support Formula. The Court took this action to assist friend of the court offices with the statewide conversion to MiCSES 2.4. In conjunction with this action, the Michigan Supreme Court announced that, for the first time in the history of Michigan's Child Support Formula, the Supreme Court would participate directly in the process and decide whether to adopt the changes recommended by the Friend of the Court Bureau's Advisory Committee and Child Support Formula Subcommittee.

The Supreme Court held a public hearing on June 19, 2003, and invited written commentary for two months. The Supreme Court is now considering the recommended changes. If the Supreme Court adopts changes to the Formula before the end of the year, the changes will take effective no sooner than July 1, 2004.

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Recent Friend of the Court Policy Releases by the State Court Administrative Office (SCAO)

On May 16, 2003, the SCAO issued Administrative Memorandum (ADM) 2003-04 regarding transfer of existing bank accounts to the executive branch and establishing new local means of processing a limited number of payments that the SDU and MiCSES currently cannot process. Supreme Court Finance and the SCAO have received questions related to ADM 2003-04. In order to address these questions, the SCAO has released “**Frequently Asked Questions (FAQ), 2003-02, Bank Account Transfer and Post-Transition Payment Processing**.” The FAQ can be found at: <http://courts.michigan.gov/scao/resources/publications/focbnewsletters/FAQ2003-02.pdf>.

On August 1, 2003, the SCAO released **ADM 2003-07, Confidentiality and Access to Friend of the Court Records**. The administrative memorandum can be found at: <http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-07.pdf>.

The SCAO recently released **ADM 2003-08, Changes to Trial Court Fees**. The administrative memorandum can be found at: <http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-08fees.pdf>. The changes in trial court fees became effective October 1, 2003. The SCAO has also released FAQ 2003-03 regarding fees. The FAQ can be found at: <http://courts.michigan.gov/scao/resources/publications/focbnewsletters/FAQ2003-03.pdf>.

Changes to Interstate Roster and Referral Guide (IRG) Website; Foreign Counties

The Federal Office of Child Support Enforcement will keep information only on countries with which the United States has reciprocity treaties. Beginning, October 10, 2003, the site will contain International information for only the following countries: Australia, Czech Republic, Ireland, Slovak Republic, Netherlands, Norway, Poland, and Portugal. In addition, the Canadian Provinces, Germany, and the United Kingdom will remain since the United States has special agreements with those countries. The website can be found at: <http://www.acf.dhhs.gov/programs/cse/newhire/irg/irg.htm>.

Early next year, the *Roster and Referral Guide* will be renamed the “*Intergovernmental Referral Guide*.” Other enhancements will include international profile information and the forms necessary to process international cases. In response to requests from states, new state profile questions will be added to the IRG website.